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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/695,848

10/29/2003

Bozidar Ferek-Petric

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EXAMINER

MEHTA, BHISMA

ART UNIT

PAPER NUMBER

3767

MAIL DATE

DELIVERY MODE

03/10/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/695,848</p>	<p>Applicant(s) FEREK-PETRIC, BOZIDAR</p>	
	<p>Examiner BHISMA MEHTA</p>	<p>Art Unit 3767</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 04 February 2009. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 46-48, 50-52, 54-59 and 61.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.

/Kevin C. Sirmons/
Supervisory Patent Examiner, Art Unit 3767

/Bhisma Mehta/
Examiner, Art Unit 3767

Continuation of 11.: Applicant's arguments in pages 6 and 7 have been considered but are not deemed persuasive. Both Whitehurst et al and Houben et al disclose treating a patient by delivering an electrical pulse to the patient to produce an electrical field. Houben et al teach that it is well known to monitor cardiac activity when delivering an electrical pulse that generates an electric field where the qRs complex from an electrocardiogram is detected and synchronized with the delivery of the electrical pulse (see abstract, lines 42-61 of column 2, and line 52 of column 4 to line 2 of column 6). Applicant's arguments that the device of Whitehurst et al stimulates a tumor but does not produce any signals to be sensed are not persuasive. In lines 5-35 of column 21, Whitehurst et al disclose that the implanted device has multiple sensors and also disclose that one or more of the sensors may also be a stimulating electrode. The sensed information or signal from the stimulating electrode or sensor is transmitted to an external device which processes the information or signal and then transmits necessary information to the device providing the stimulation. Therefore, Whitehurst et al do teach signals coming from the organ to be stimulated that need to be sensed. Whitehurst et al disclose that the sensors are used to monitor the state of the patient during the delivery of the electrical pulses to the patient and this indicates that Whitehurst et al disclose sensing the response of the patient's body due to the application of the electrical pulses. Applicant's arguments that Houben et al do not suggest and teach away from the synchronization of stimulation delivery to signals from some other, non-stimulated organ are not persuasive. Houben et al disclose detecting a qRs complex from a cardiac or heart sensor which constitutes detecting a signal from a non-stimulated organ. Houben et al also disclose synchronizing the delivery of electrical pulses with the qRs complex or the signals coming from the non-stimulated organ. Therefore, it would be obvious to add the qRs synchronization of Houben et al to the method of Whitehurst et al as both Whitehurst et al and Houben et al teach that an organ which is stimulated may produce electrical signals which sensed or monitored and Houben et al teach that it is well known to detect a qRS complex which is sensing cardiac electrical activity and to synchronize the stimulation with the qRs complex to avoid interference with the sensing of the electrical signals from the stimulated organ .

Continuation of 13. Other: In line 13 of claim 46 and in line 15 of claim 58, it appears that the use of the word "electrogram" is in error as previously the word "electrocardiogram" was used (see claim amendment filed August 21 2008). Therefore, it is unclear why the claim amendments of January 5 2009 and February 4 2009 indicated "electrogram". It also appears that in line 11 of claim 46 filed January 5 2009 and February 4 2009, "said electrical pulse" should be "said at least one electrical pulse" (see claim amendment filed August 21 2009)